

December 5, 2000

RE: Ruling Request

Tax on Transfer of Taxicab Licenses
FLR-004768-014

Dear Mr. :

This letter responds to your request, received September 7, 2000, for a ruling applying the New York City Tax on Transfer of Taxicab Licenses (the "TTTL") to the transaction described below.

FACTS

The facts presented are as follows:

On , , (the "Wife") and (the "Husband") were married. In , all the shares of stock of the Corporation (the "Corporation") were acquired in the Wife's name. The Corporation then bought two New York City taxicab medallions, numbers and . The medallion purchases were financed by loans.

You have represented that the assets used to purchase the stock of the Corporation and the medallions were marital assets. You have also represented that the income from and expenses incurred with respect to the taxi medallions were marital property and that the Husband's and Wife's address was given as the address of the Corporation for licensing purposes. As a result, the shares of the Corporation owned by the Wife meet the definition of "marital property" for purposes of the New York State Domestic Relations Law (the "DRL").

The Husband and Wife were divorced in . During the year , they entered into a separation agreement relating to property distribution. Under the separation agreement, the Wife is to transfer 100 percent of the shares of the Corporation to the Husband.

ISSUE

You have requested a ruling that the TTTL should be imposed on only 50 percent of the shares to be transferred by the separation agreement. As more fully explained below, you reason that, because the shares of the Corporation's stock owned by the Wife meet the definition of marital property under the DRL, the Husband and the Wife each owned 50 percent of those shares before their transfer pursuant to the separation agreement. As a result, when the Wife transfers that stock to the Husband she is transferring only 50 percent of the shares, with the result that the TTTL should be imposed on 50 percent of consideration for the transfer.

CONCLUSION

Based upon the facts presented and the representations submitted, we have determined that spouses' interests in marital property do not create ownership or other property interests for purposes of the TTTL. As a result, whether or not the shares of the Corporation's stock would be marital property under the DRL, when the Wife transfers that stock to the Husband, the TTTL will be imposed on 100 percent of the fair market of that stock.

DISCUSSION

The TTTL imposes a tax on each transfer of a New York City taxicab license or interest therein. Section 11-1402.a of the New York City Administrative Code (the "Code"). Under Code section 11-1402.b, the TTTL also applies to the transfer of shares of stock of a corporation that holds a taxicab license or interest therein. In each case, the tax is imposed at the rate of five percent of the consideration given for the transfer. Code section 11-1401.4 defines "consideration" as the price paid or required to be paid for the license by money, property, or anything of value.

In this case, the Corporation holds an interest in a taxicab license. The Wife, the Corporations' sole shareholder, proposes to transfer 100 percent of the Corporations' stock to the Husband. Under Code section 11-1402.b, the TTTL will apply to that transfer. The amount of the tax will be five percent of the consideration given for the transfer.

Amount of consideration. Consideration under the TTTL is the price paid, or required to be paid, for the license by money, property, or anything of value. In this case, the transfer is pursuant to a separation agreement. No regulations have been promulgated under the TTTL, and we have found no authority under that tax applying the definition of consideration in the context of a separation agreement.

Like the TTTL, the New York City Real Property Transfer Tax (the "RPTT") imposes tax upon the amount of consideration for a transfer. Also, like the TTTL, the RPTT defines "consideration" as the price paid or required to be paid for the property by money, property, or anything of value." Code section 11-2101.9.

Regulations promulgated under the RPTT specifically address consideration in the context of the conveyance of realty from one spouse to the other pursuant to the terms of a separation agreement. Title 19 of the Rules of the City of New York (the "RCNY") section 23-03(d)(3) provides that "in the absence of evidence establishing the consideration, it is presumed that the consideration for the conveyance, which includes the relinquishment of marital rights, is equal to the fair market value of the interest in the property conveyed."

Because the applicable statutory language providing authority for that RPTT regulation is the same as that under the TTTL, we conclude that the substance of 19 RCNY section 23-03(d)(3) should apply to the TTTL. Thus, because the shares of the Corporation are being transferred pursuant to the terms of a separation agreement, the consideration is equal to the value of those shares, absent evidence otherwise establishing the consideration.

Marital property and the DRL. DRL section 236(B)(5) addresses the disposition of property in matrimonial actions. In general, it provides that, absent an agreement between the parties, "marital property" will be distributed equitably between the spouses. "Separate property" is not subject to equitable distribution and remains with the title owner.

Under DRL section 236(B)(1)(c), marital property is property acquired by either or both spouses during marriage and before the execution of a separation agreement or the beginning of a matrimonial action such as a divorce proceeding, regardless of the form in which title is held. Separate property generally is property that was acquired before the marriage or property acquired during the marriage by gift or bequest. DRL section 236(B)(1)(d).

The general purpose of the equitable distribution statute is to provide a method to distribute property deemed marital property upon consideration of various factors and based on the premise that marriage is an economic partnership. Hartog v. Hartog, 85 N.Y.2d 36, 47 (1995); DRL section 236(B)(5)(d).

You have asked us to rule that the only 50 percent of the shares to be transferred by the separation agreement based on the following reasoning: First, because the shares were acquired during the marriage, and were not acquired by gift or bequest, they met the definition of marital property in DRL section 236(B)(1). Second, had there not been a separation agreement, they would have been subject to equitable distribution. Third, if equitable distribution were applied,

the Husband would have been entitled to 50 percent of the shares. Fourth, because he would have been entitled to those shares, he should be treated as having owned them before the separation agreement. Finally, because he owned 50 percent of the shares before the separation agreement, only 50 percent of shares will be transferred.

We have found no authority resolving this issue under the TTTL. The issue of the effect of marital property in an RPTT matter was addressed in an Administrative Law Judge Determination of the New York City Tax Appeals Tribunal in In re Barash, TAT(H)96-121(RP) (August 8, 1997). In that case, the ALJ concluded that the taxpayers' assertion that property was marital property had no bearing on the RPTT issues presented.¹

In other legal contexts, courts have held the definition of marital property in the DRL applies only to matrimonial actions and does not create property rights in the spouses' respective interests in the marital property. For example, in In re Frederes, 141 B.R.289 (Bankr. W.D.N.Y. 1992), the husband declared bankruptcy. During their marriage, the couple had acquired vacant real property and had put the title in the wife's name. The bankruptcy trustee brought an action against the wife to obtain half of the property's value on the basis that the property was marital property under the DRL. The Bankruptcy Court denied the trustee's request, reasoning that: "in New York rights in equitable distribution vest only when there is an actual judgment of divorce awarding distribution of marital property. There are no vested present or contingent property rights or interests, legal or equitable, in such property under the New York [DRL]."

See also In re Cole, 202 B.R. 356 (Bankr. S.D.N.Y. 1996); Cappiello v. Cappiello, 110 A.D.2d 608 (N.Y.App. Div., 1st Dept.), *aff'd*, 66 N.Y.2d 107 (1985) ("the fact of marriage, standing alone, does not automatically vest property rights in the assets or estates of the other spouse"); People v. Hudson, 269 A.D.2d 747 (N.Y.App. Div., 3rd Dept. 2000).

¹ In Barash, a wife owned real property in New York City and transferred it to her husband and herself as tenants by the entirety. The couple claimed that they did not owe RPTT on the conveyance, because, among other reasons, the property would qualify as marital property under the DRL. As a result, the husband already owned 50% of the property before it was transferred.

The ALJ ruled against the taxpayers:

Even assuming that, in the case here, the Property could qualify as marital property and not as separate property pursuant to the pertinent sections of the DRL, such a determination is relevant only in matrimonial actions of divorce, separation, annulment or to declare the nullity of a void marriage. See DRL section 234. Petitioners have not shown that marital property status has any bearing on the RPTT in this matter.

We conclude that the reasoning in those other legal contexts should apply to the TTTL. Thus, in this case, the Wife owned 100 percent of the shares of the Corporation before their transfer to the Husband, and, after the transfer, he will own 100 percent. As a result, the TTTL applies to the transfer of 100 percent of the shares of the Corporation.

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The Department of Finance reserves the right to verify the information submitted.

Sincerely,

Devora B. Cohn
Assistant Commissioner
for Legal Affairs

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